

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:16-CR-132-A
)
Government,)
) FORT WORTH, TEXAS
VERSUS)
) FEBRUARY 17, 2017
MEGAN KEMP (26),)
)
Defendant.) 9:47 A.M.

VOLUME 1 OF 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S :

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P R O C E E D I N G S

October 19, 2016 - 10:11 a.m.

THE COURT: Okay. I'm next calling for sentencing Number 4:16-CR-132-A. It's United States of America, this time the defendant is Megan Kemp.

And the government is represented by Mr. Smith, and Mr. Graham is here for Ms. Kemp.

Ms. Kemp, state your full name for the record.

THE DEFENDANT: Megan Eleanor Kemp.

THE COURT: Okay. You appeared before me --

THE DEFENDANT: Yes, sir.

THE COURT: Let me get the exact -- it was on October 19, 2016, when you entered a plea of guilty to the offense charged by the fourth superseding indictment in this case, and that was a one-count superseding indictment that charged you with the offense of conspiracy to possess with intent to distribute a controlled substance, and we're here today for sentencing based on the conviction resulting from that plea of guilty.

Mr. Graham, did you and your client receive in a timely manner the Presentence Report and the addendum to it?

MR. GRAHAM: Yes, Your Honor.

THE COURT: Did both of you read those items and then discuss them with each other?

MR. GRAHAM: Yes, Your Honor.

1 THE COURT: Let's see. There was some objections to
2 the Presentence Report. You've seen the government's response
3 to those objections, and the probation officer's response, and
4 my order that I issued on February 10 advising of my tentative
5 conclusion that, except to the extent accepted by the
6 probation officer, the objections are without merit.

7 Do you still want to pursue any of those, or does
8 your client wish to pursue any of those objections now?

9 MR. GRAHAM: Judge, just objection number 12 that
10 refers to paragraph 120 of the Presentence Report and that --

11 THE COURT: Okay. Let me refresh my memory on what
12 that was. That's objection 12?

13 MR. GRAHAM: Yes, sir.

14 THE COURT: Objection to paragraph 120?

15 MR. GRAHAM: Yes, sir.

16 THE COURT: Okay. By the way, I'm going to get off
17 point a little bit here.

18 I received on February 6 a document titled,
19 Defendant Megan Kemp's Sentencing Memorandum and Motion for
20 Variance, and then on February 7 there was filed a document by
21 that same name. Oh, I think I see what happened. The
22 original was filed, and then somehow or other I got, in
23 chambers, a copy of it before the original got filed. I don't
24 know how that happened, but I see they are the same thing.

25 You did only file one sentencing memorandum, I take

1 it?

2 MR. GRAHAM: Yes, sir.

3 THE COURT: Okay. They are the same thing. That
4 was confusing me a little bit.

5 Okay. Let me see what you've said in objection 12.

6 Do you have any evidence you want to offer in
7 support of your objection?

8 MR. GRAHAM: No, Judge. I was simply going to
9 reurge the matters argued in the sentencing memorandum.

10 THE COURT: Okay. Hold on just a minute.

11 (Pause in Proceedings)

12 THE COURT: Okay. It has to do with the cooperation
13 your client or assistance your client provided to the state of
14 Texas in connection with a shooting of somebody?

15 MR. GRAHAM: Yes, Judge. Well, to an assault. It
16 was not a shooting, it was a stabbing.

17 THE COURT: Okay. Let me look at the part of the
18 Presentence Report you were referring to.

19 Okay. You're saying that the probation officer
20 should have informed the Court in paragraph 120 about that, so
21 it could be taken into account in determining whether there
22 should be a sentence above the top or below the bottom of the
23 advisory guideline range?

24 MR. GRAHAM: Yes, sir.

25 THE COURT: Okay. Do you have any evidence you want

1 to offer about that subject?

2 MR. GRAHAM: No, Judge, just I -- along with that
3 sentencing memorandum, I did attach exhibits to it, which
4 included Ms. Kemp's trial testimony.

5 THE COURT: Okay. Let me refresh my memory on that.
6 I went through that earlier, and it would help if there's some
7 particular part in it that you want me to take particular
8 notice of, if you would call my attention to it at this time,
9 that would be helpful.

10 MR. GRAHAM: Well, Your Honor, additionally to the
11 transcript, there is a report that was issued by the state's
12 prosecuting attorneys, and I believe that summary may give you
13 a little more direct insight into --

14 THE COURT: You're talking about the Exhibit B --

15 MR. GRAHAM: Yes, sir.

16 THE COURT: -- to the sentencing memorandum?

17 MR. GRAHAM: Yes, sir.

18 THE COURT: Let me glance back over that and refresh
19 my memory on that.

20 What was the purpose of this report? Do you know?

21 MR. GRAHAM: I believe the purpose of it was just
22 distribution of the information through the Texas District and
23 County Attorney's Association.

24 THE COURT: It was a report that was published in a
25 district and county attorney publication?

1 MR. GRAHAM: Yes, sir.

2 THE COURT: Okay. Well, let me glance at it again.

3 Is this highlighted language on page 5 of the
4 report, does that refer to your client?

5 MR. GRAHAM: Yes, Judge.

6 THE COURT: Margo?

7 MR. GRAHAM: Yes.

8 THE COURT: And it was her husband on trial?

9 MR. GRAHAM: No, Judge.

10 THE COURT: Who was on trial?

11 MR. GRAHAM: A defendant by the name of James Byrd.

12 *(Pause in Proceedings)*

13 THE COURT: Tell me a little bit more about his
14 conduct.

15 Is he the one that terribly tortured somebody before
16 they finally killed him?

17 MR. GRAHAM: Yes, Judge. I don't think he
18 was -- the person was killed, but he was terribly tortured,
19 like you described. He participated in more than one act of
20 violence. The one that was in trial had to do with a man
21 named Stikeleather, who was the complainant in the case, and
22 he had been kidnapped and had been stabbed a couple of times,
23 and at the time that he was stabbed, Mr. Byrd also took a
24 piece of bread and pushed the gashed wound -- pushed a piece
25 of bread into it and ate it, and then gave Mr. Stikeleather a

1 piece of the bread and had him eat it, and said something to
2 the effect of, now we're brothers.

3 *THE COURT:* They were a pretty bad bunch, weren't
4 they? Well, how did your client get mixed up with all those
5 people?

6 *THE DEFENDANT:* My husband.

7 *MR. GRAHAM:* It was through contacts that her
8 husband had had through the -- through Mr. Byrd and other
9 affiliates.

10 *THE COURT:* Okay. Okay. But that's all the
11 evidence you have to offer?

12 *MR. GRAHAM:* Yes, Judge.

13 *THE COURT:* Okay. Okay. You can go ahead and make
14 whatever statement you would want to make on behalf of your
15 client, and, of course, I'll take into account --

16 *(Bench Conference with Courtroom Deputy)*

17 *THE COURT:* Okay. I'll take these things into
18 account.

19 Now, before I do that, let me get of record my
20 findings and conclusions.

21 The Court adopts as the findings of the Court, the
22 fact findings of the Court, the facts set forth in the
23 Presentence Report as modified or supplemented by the
24 addendum, and the Court adopts as the conclusions of the Court
25 the conclusions expressed in the Presentence Report as

1 modified or supplemented by the addendum.

2 The Court concludes that the total offense
3 level -- hold on just a second -- I'm getting my papers mixed
4 up.

5 The total offense level is 35; that the Criminal
6 History Category is VI; that the imprisonment range is 292 to
7 365 months; that the supervised release range is 4 to 5 years;
8 that the fine range is \$40,000 to \$5 million; and that a
9 special assessment of \$100 is mandatory.

10 Okay. You can go ahead and make whatever statement
11 you would like to make on behalf of your client at this time.

12 MR. GRAHAM: Thank you, Judge.

13 I want to let the Court know that in 2012, I
14 represented Ms. Kemp in state court and I -- we kind of put a
15 little bit of coincidental cosmic value in that in our
16 relationship as it relates to this case.

17 There's a state -- saying that coincidences are the
18 universe's way of remaining anonymous, and me knowing that, I
19 feel compelled to just give you a little information about
20 Ms. Kemp's life that's -- it's largely reflected in her
21 Presentence Report.

22 She's a 27-year-old female who has two children.
23 She's a single mother. She had -- has come from a broken
24 home, and that her father abandoned her and her brother when
25 she was just a toddler. When he did that, he not only

1 abandoned them physically, but abandoned them financially, and
2 directed them on the path of poverty that we see in our
3 society so much that is a result of that, that instance of a
4 father turning his back on his obligations to his family.

5 Moving forward, her father had not been in her life,
6 and although that's unfortunate, he also took his life at just
7 about the time of Ms. Kemp's birthday, and so she has to deal
8 with that emotional scar as well as being abandoned. Her
9 being abandoned was unfortunate enough, but the fact that her
10 father cared so little about her that he would put a memory of
11 his death at the time of her birth is just disgraceful.

12 Now, she's -- she moved from California around the
13 age of 17 to Texas, and she had already started using or
14 experimenting with various substances, and that's reflected
15 also in her criminal history, Judge. Her criminal history is
16 largely petty offenses, petty theft. She -- the case that we
17 had in 2012 was a state jail theft that was the result of
18 repetition of theft.

19 And she played a minor role in this conspiracy. She
20 is not -- wouldn't be considered a kingpin, and her financial
21 position also supports that she was more of a mule than
22 someone who was in a leadership role or someone who was
23 participating solely for profit.

24 I believe a lot of this was just to support her
25 habit in the day-to-day. Pursuant to that, Judge, I would ask

1 for Ms. Kemp to be able to participate in the Residential Drug
2 Abuse Treatment Program, knowing that she may not be eligible
3 for any time relief, but she needs that treatment for purposes
4 of finding another way to live, Judge.

5 Okay. Now, lastly, I would just add -- I understand
6 the need for sentence to be imposed, but I would ask you to
7 take Ms. Kemp's age of 27 into consideration. Her family
8 predicament is that she has a -- her mother, who is a person
9 approaching old age, who has a rheumatic disorder. She has
10 two minor children, who her mother is trying to raise and to
11 rear, but to take those things into account.

12 I would ask that the Court in fixing this sentence,
13 that you would consider a sentence that would give Ms. Kemp a
14 second chance, and that second chance would be for her to
15 reunite with her family and to be able to participate
16 meaningfully in her life, in that family life, with the hope
17 that the time that she spent in prison will help her to mature
18 as a woman, as a human, as a mother, that she will get the
19 skills and tools that she needs to step out of prison and live
20 a life where she not only does not have the desire to use
21 drugs, but she has the desire to live a different way of life.

22 Taking that into account and the reasons that I
23 asked -- the reasons we made in the request in the Motion for
24 Variance and Sentencing Memorandum, I would ask the Court for
25 a downward variance, Your Honor.

1 Thank you, sir.

2 THE COURT: You said you represented her in a state
3 court case on a 2012 offense. Is that the one mentioned in
4 paragraph 56 of the Presentence Report?

5 MR. GRAHAM: Yes, Judge.

6 THE COURT: She's certainly had a lot of -- though
7 they may not have been serious convictions, she had a bunch of
8 them, particularly theft.

9 MR. GRAHAM: Yes, sir.

10 THE COURT: Ms. Kemp, you have the right to make any
11 statement or presentation you would like to make on the
12 subject of mitigation, that is, the things you think the Court
13 ought to take into account in determining what sentence to
14 impose, or on the subject of sentencing more generally, and
15 I'll invite you at this time to do that.

16 THE DEFENDANT: Your Honor -- I'm sorry.

17 THE COURT: Go ahead.

18 THE DEFENDANT: Sorry.

19 Your Honor, I have a quick question before I do.
20 Did you happen to receive a copy of the letter that my
21 attorney filed by chance?

22 THE COURT: I have a letter that looks like it's a
23 handwritten letter from you. Is that the one you're talking
24 about?

25 THE DEFENDANT: Yes. I was told that -- I wasn't

1 sure if you accepted handwritten letters, or if it had to be
2 typed, so there should be a --

3 *THE COURT:* Well, somebody typed it.

4 *THE DEFENDANT:* Yeah, there is -- there should be a
5 handwritten and a typed one.

6 *THE COURT:* I have both versions, and I've read
7 them. I have the handwritten letter, and then I have the
8 typewritten version.

9 Did you type the handwritten -- did you type it
10 after you hand wrote it?

11 *THE DEFENDANT:* I had -- I did the handwritten and
12 then I copied it and had him --

13 *THE COURT:* Your attorney typed it?

14 *THE DEFENDANT:* Yes, and then, luckily, with the
15 Parker County Jail, they allowed me to go to the law library
16 and type one up, so I brought one just in case.

17 *THE COURT:* Well, I appreciate your attorney typing
18 that for me, but your handwriting is good enough I didn't have
19 any trouble reading that.

20 *THE DEFENDANT:* Awesome. Glad to hear that.

21 Thank you for reading that. In doing so, I guess I
22 would just like to say that I do apologize for taking up the
23 court's time, taking up your time. I'd like to apologize to
24 my family and to the community and everything like that, and
25 just thank you for everything. And I apologize, I didn't

1 expect to be so emotional. Whew.

2 *THE COURT:* Okay. Anything else?

3 *THE DEFENDANT:* That's it. Thank you, Your Honor.

4 *THE COURT:* Well, I'm not persuaded that there
5 should be a sentence below the bottom of the advisory
6 guideline range, but I am persuaded that a sentence fairly
7 close to the bottom of the guideline range would be an
8 appropriate sentence that would adequately and appropriately
9 address all the factors the Court should take into account in
10 sentencing and would be a reasonable sentence, and that would
11 be a sentence of 300 months, which is, of course, 65 months,
12 over 5 years, below the bottom of the advisory guideline
13 range.

14 And that would be combined -- now, that would run
15 consecutively to any sentence growing out of a probation
16 violation in the Superior Court of Carroll County, Georgia,
17 it's Case Number 10CR706.

18 And that would be combined with a term of supervised
19 release of 4 years that would start once you've completed your
20 sentence of imprisonment and an obligation to pay a special
21 assessment of \$100.

22 I'm satisfied that a sentence of the kind I've just
23 described will be adequate and appropriate to address all the
24 factors the Court should consider in sentencing.

25 So the Court orders and adjudges that the defendant

1 be committed to the custody of the Bureau of Prisons to serve
2 a term of imprisonment of 300 months.

3 I'm also ordering that the defendant serve a term of
4 supervised release of 4 years that will start when she's
5 completed her sentence of imprisonment, and that the
6 conditions of that supervised release will be the standard
7 conditions that will be set forth in the judgment of
8 conviction and sentence, and the following additional
9 conditions:

10 The defendant shall not commit another federal,
11 state, or local crime.

12 The defendant shall not unlawfully possess a
13 controlled substance.

14 The defendant shall cooperate in the collection of
15 DNA as directed by the probation officer.

16 The defendant shall participate in mental health
17 treatment services as directed by the probation officer until
18 successfully discharged, and those services may include
19 prescribed medications by a licensed physician, and she'll
20 contribute to the cost of those services at the rate of at
21 least \$25 a month.

22 She shall refrain from any unlawful use of a
23 controlled substance and shall submit to one drug test within
24 15 days of release from imprisonment and at least two periodic
25 drug tests thereafter as directed by the probation officer,

1 pursuant to the mandatory drug testing provision of the 1994
2 Crime Bill.

3 She shall participate in a program approved by the
4 probation officer for treatment of narcotic or drug or alcohol
5 dependency that will include testing for the detection of
6 substance use, and she shall abstain from the use of alcohol
7 and all other intoxicants during and after completion of that
8 treatment, and she'll contribute to the cost of those services
9 at the rate of at least \$25 a month.

10 I'm also ordering the defendant to pay a special
11 assessment of \$100. That's payable immediately to the United
12 States of America through the office of the clerk of court
13 here in Fort Worth.

14 And I am going to recommend to the Bureau of Prisons
15 that you be permitted to participate in that drug -- long-term
16 drug program.

17 *THE DEFENDANT:* Thank you, Your Honor.

18 *THE COURT:* They don't have to follow my
19 recommendation, but sometimes they do.

20 *THE DEFENDANT:* Thank you.

21 *THE COURT:* You have the right, Ms. Kemp, to appeal
22 from the sentence I've imposed, if you're dissatisfied with
23 it. That appeal would be to United States Court of Appeals
24 for the Fifth Circuit.

25 You have the right to have the clerk of court file a

1 notice of appeal for you, and the clerk would do that
2 forthwith, if you were to specifically request it.

3 You and your attorney have been given a form that
4 outlines certain rights and obligations in reference to an
5 appeal. If you haven't already done so, I want the two of you
6 to review it and be sure you understand it, and once both of
7 you are satisfied you understand it, I want both of you to
8 sign it and return it to the court coordinator.

9 Has that been done, Mr. Graham?

10 MR. GRAHAM: Yes, Judge.

11 MR. SMITH: Your Honor, the government moves to
12 dismiss the indictment filed on June 15, 2016, as to this
13 defendant only.

14 THE COURT: That motion is granted.

15 Okay. You're excused, Mr. Graham.

16 MR. GRAHAM: Thank you, Judge.

17 THE DEFENDANT: Thank you.

18 THE COURT: And you're excused, Mr. Smith, unless
19 you're here on something else.

20 MR. SMITH: Thank you, Your Honor.

21 THE COURT: Okay. We'll be in recess until we do
22 the rearraignment at 10:30.

23 COURT SECURITY OFFICER: All rise.

24 (Recess)

25 (End of Proceedings)

REPORTER'S CERTIFICATE

I, Debra G. Saenz, CSR, RMR, CRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 2nd day of June, 2017.

/s/ Debra G. Saenz

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